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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MICHAEL DEMARTINI et al., Cross-complainants and Appellants, v. TIMOTHY P. DEMARTINI et al., Cross-defendants and Respondents.	A160849 (Marin County Super. Ct. No. CIV085235)

Once again, before us is the protracted dispute involving the eight children of James DeMartini, Sr., and Thelma,[1] and their respective spouses, who received bequests of real property in equal shares of James, Sr., and Thelma's fairly extensive real property holdings located in San Anselmo and in Nevada County. The parties are cross-complainants and appellants Michael and his wife Renate (Michael), and cross-defendants and respondents Timothy and his wife Margie along with Daniel and his wife Linda, David and his wife Nancy, Mark and his wife Laurie, Jon and his wife Lynne, and Sally Humphreys and her husband Newell (the Timothy Group or

[1] For purposes of clarity and convenience we will refer to the parties, who are all members of the DeMartini family, individually by their first names. No disrespect is intended.

Group).[2] This is the fourth appeal filed in this matter following an interlocutory judgment of partition issued in 2011. In this appeal, Michael argues that the trial court abused its discretion in granting the Timothy Group's motion for an order apportioning $790,967 in postjudgment attorney fees and environmental clean-up costs related to the remediation of the San Anselmo property (Property). We find no abuse of discretion and affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Appeals

As we have previously observed, the background of this case is well-known to the parties and this court, and we need not recount it in great detail here. As we noted in our first opinion in this matter, *DeMartini v. DeMartini* (June 28, 2013, A133277) [nonpub. opn.] (*DeMartini I*), "[t]he litigation before us was initiated with two complaints filed on October 23, 2008, by [the Timothy Group]: one, for partition by sale of the [Property]; the second, for preliminary and permanent injunction against Michael and Renate to prohibit any further use of funds to repair or improve the [Property]. The temporary restraining order, issued in the case by stipulation, was subsequently dissolved, and the trial court denied the request for a preliminary injunction on the ground that [the Group] failed to show a likelihood of success on the merits. [¶] Michael . . . subsequently filed a cross-complaint for partition against [the Timothy Group and James C. and Ruth]. In 20 separate causes of action the cross-complaint sought partition in kind of each of the parcels of real property jointly owned by the parties. The request

[2] The other sibling, James C. and his wife Ruth, filed a nonopposition to the motion below and do not appear as parties in this appeal.

of Michael and Renate for partition in kind of the property was ultimately joined by James C. and his wife Ruth; [the Timothy Group] requested partition by sale of all of the parcels."

In the consolidated appeals filed by Michael, we affirmed the trial court's interlocutory judgment, which decreed that all the parcels left to the siblings, except for the Property, should be partitioned in kind based on the partition plan put together by the Timothy Group. (*DeMartini I*, *supra*, A133277.) As to the Property, the court ordered its sale and distribution of the proceeds to the parties in equal one-eighth shares after "the evidence adduced at trial, including an environmental site assessment report by AllWest Environmental Inc., revealed the cognizable prospect of subsurface environmental contamination of the property due to possible past release of drycleaning chemicals on the site." (*Ibid.*) We remanded for reconsideration of a portion of the judgment that credited one of the siblings (David) for improvements he had made to a building in which he operated his pharmacy business, to reflect his payment of below-market rent for many years. (*Ibid.*)

When the trial court declined to readjust the parties' obligations on remand, Michael once again appealed and we affirmed. (*DeMartini v. DeMartini* (Mar. 4, 2015, A140389) [nonpub. opn.] (*DeMartini II*).) Following Michael's second appeal, the siblings requested by three competing motions that the trial court apportion the attorney fees and other costs incurred in connection with the partition proceedings under Code of Civil Procedure[3] sections 874.010 and 874.040. (*DeMartini v. DeMartini* (May 30, 2017, A147782) [nonpub. opn.] (*DeMartini III*).) The Timothy Group requested an apportionment of over $1 million for its attorney fees and costs, while

[3] All further statutory references are to the Code of Civil Procedure.

Michael and Renate requested apportionment of $363,568, and James C. and Ruth requested apportionment of $139,045. (*Ibid.*)

On September 11, 2015, the trial court filed a preliminary order on the parties' motions. The court determined that all three sets of parties were entitled to some amount of their attorney fees and costs. It structured its order by dividing into nine categories the fees and costs incurred during various phases of trial and posttrial matters, some of which the court ruled were apportionable and some of which were found not to be apportionable. The court ordered the parties to file supplemental briefing specifying objections the parties had made as to various billing entries. (*DeMartini III*, *supra*, A147785.)

On January 20, 2016, the trial court filed its final order apportioning fees and costs. The order generally reflected the protocols set forth in the September 11, 2015 order. The order designated the total apportionable fees and costs as follows: (1) $820,243 for the Timothy Group; (2) $139,044 for James C. and Ruth; (3) $181,784 for Michael and Renate; and (4) $231,210 for Timothy's own out-of-pocket costs, which primarily consisted of funds he had expended to cover certain environmental clean-up costs for the Property. The four amounts were allocated in equal portions to each of the eight couples based on their equal ownership interests. The Timothy Group appealed and we affirmed the order. (*DeMartini III*, *supra*, A147782.)

B. The Present Appeal

1. Additional Background

In June 2011, the trial court appointed a referee to manage the sale of the Property.

In February 2012, the Timothy Group filed a lawsuit against Quik Stop Markets, Inc. (lessee of the Property) and Dillon Companies, Inc. (the lessee's

corporate guarantor) (collectively Quik Stop) for breach of contract and contribution arising from the environmental contamination of the Property. The Group reportedly obtained a cost-sharing agreement with Quik Stop and dismissed the lawsuit without prejudice.

Also in February 2012, the trial court appointed a management company (HL Property Management) to act as a limited receiver for the Property.

In August 2012, the Department of Toxic Substances Control (DTSC) issued an "Imminent and Substantial Endangerment Determination and Order and Remedial Action Order," naming all the Property's coowners, the receiver, and Quik Stop as respondents and responsible parties, and thereby asserted jurisdiction over the Property. The DTSC found that Quik Stop had disposed hazardous substances from dry-cleaning chemicals on the Property for over 31 years. Among other things, the DTSC ordered these respondents to prepare inspections, studies, reports, and remedial action plans within a specified timeline and submit monthly reports. The pending DTSC action rendered the property unmarketable.

In March 2013, the trial court responded to a request for instructions filed by the receiver regarding the environmental cleanup. The court ordered the receiver to "insure that all contractors working on the property have submitted proof of general liability and workers compensation insurance with the owner parties named as an additional insured, provide notices to tenants as necessary, provide access to contractors, inspectors, DTSC supervisors, etc. and supervise same as needed, pay all bills related to the cleanup from property management accounts, post/deliver any necessary environmental disclosures, and perform any other services as may be necessitated by the clean-up project . . . ."

2. The Order That Is the Subject of this Appeal

On December 19, 2019, the Timothy Group filed a notice of motion asking the trial court to apportion expenses and attorney fees incurred in connection with the remediation of the Property. In their memorandum of points and authorities, the Group indicated they were seeking "the equitable allocation and recovery for costs, inc1uding attorneys' fees, incurred in this partition action by them after the Court's Orders filed September 11, 2015 and January 20, 2016 (the 'Orders') granting the parties' cross-motions for apportionment of attorneys' fees and costs in this partition action." They asked the court "to determine and allocate the presented costs and attorneys' fees which were incurred subsequent to the Orders and which were for the common benefit."

The Timothy Group explained that Timothy had "taken on substantial work with the DTSC, environmental consultants, contractors and other public agencies to remedy the environmental issues at the [Property]," and he had "incurred substantial costs which have not been borne by the other parties in this action," namely, "$540,000.95 in clean-up costs and consultant fees (not including legal services)" and $212,713.24 in attorney fees. The Group averred that these costs and fees had been expended "for the common benefit because of DTSC's mandatory requirements imposed upon the property due to the environmental contamination and subsequent remediation. This work has been to the benefit of all the owners of the property."

In arguing that the costs should be equitably apportioned among all the siblings, the Timothy Group cited to the trial court's September 11, 2015 order in which the court stated that it had "adopt[ed] the parties' agreement to apportion the fees and costs incurred in addressing the regulatory

environmental action brought against the [Property] according to the parties' ownership interests." The Group acknowledged that "[t]he costs of partition are normally paid out of the proceeds of the sale of the [Property]."[4] They averred, however, that "this scheme for payment of remediation of the property [was] inadequate because there was insufficient income to pay the DTSC, consultants, and others who have furnished services which had to be performed in order to comply with the Court's Interlocutory Judgment for the sale of the [Property]. Accordingly, [Timothy] paid considerable expenses relating to the ongoing and continuing environmental characterization and remediation of the [Property] which benefits all of the owners."

In an accompanying declaration signed under penalty of perjury, Timothy stated that he had "subsidized the costs for the remediation out of personal resources since the [Property]'s cash flow could not support it." He included as an exhibit "a transaction list of all the invoices paid in relation to the [Property], which includes environmental clean-up costs and consultants' fees for the time period since the Court's last apportionment of fees, and a true and correct copy of the calculated 5% interest on these costs." He also provided copies of billing statements from the Timothy Group's environmental counsel, as well as from the Group's three other retained attorneys.

Michael's opposition argued that the motion should be denied for the following reasons: "1. The parties stipulated to one motion for apportionment (which was briefed, argued, heard, and decided) and no further jurisdiction

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[4] Proceeds of a sale are applied to payment of the expenses of sale as well as "[p]ayment of the other costs of partition in whole or in part or to secure any cost of partition later allowed," prior to distribution of the residue among the parties. (§ 873.820, subd. (b).)

was reserved; 2. Any necessary post-judgment environmental or continuing property work was to be done by the Court appointed Referee and Receiver; 3. There is no evidence that the work was for the common benefit, or accomplished anything at all; and 4. Any amounts sought by Timothy Group are in contravention to the [B]usiness and [P]rofessions [C]ode and previous Court Orders." Michael also asserted that the amounts claimed by Timothy were "unreasonable, excessive, and inflated," although he did not cite to any specific billing entries in support of this assertion. James C. and Ruth filed a nonopposition to the motion.

On June 25, 2020, the trial court issued its order on the apportionment of fees and costs. In its order, the court cited to the September 11, 2015 and January 20, 2016 orders granting the parties' cross-motions for apportionment of fees and costs. The court stated that these orders had "specifically reserved the issue of the apportionment of fees and costs incurred subsequent to the Orders, including, but not limited to, any recoverable fees and costs relating to the Post-Trial Environmental Work and Property Management of the [Property]." The court further stated: "After presentation of declaration(s), billing records, evidence, the Court's own knowledge and experience of this case, and other arguments, and based thereon, the Court, with good cause appearing, apportions and makes an award of costs and fees it deems reasonable to the parties." The court granted Timothy all of the attorney fees and remediation-related costs he had requested, plus 5 percent interest, and ordered each sibling to pay him $98,870.96. This appeal followed.

II.

DISCUSSION

A. The Order Is Appealable

Preliminarily, we address the Timothy Group's assertion that we should dismiss this appeal because the order on which it is based is not a final appealable order.

In his opening brief, Michael states that the trial court's order is appealable under section 904.1, subdivision (a)(2) because it "arises from an attorneys' fee order after an Interlocutory Judgment made appealable by CCP § 904.1[, subdivision](a)(9)." The Timothy Group contends that the order does not qualify as an appealable order "because the 'judgment' referred to in section 904.1[, subdivision](a)(2) excludes interlocutory judgments under section 904.1[, subdivision](a)(1)." The contention fails.

An interlocutory ruling leaves some issues open for future determination. (See *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 141.) Most interlocutory decisions are not appealable. (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 754.) However, under section 904.1, an appeal may be taken from "an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made." (§ 904.1, subd. (a)(9).) Orders made after such judgments are also appealable. (*Id.*, subd. (a)(1), (2), (9).)[5] Additionally, an order granting attorney fees is an appealable order after judgment.

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[5] Section 904.1, subdivision (a) provides, in relevant part: "An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following: [¶] (1) From a judgment, except an interlocutory judgment, *other than as provided* in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222. [¶] (2) From an order made after a judgment made appealable by paragraph (1)." (Italics added.)

(*Whiteside v. Tenet Healthcare Corp.* (2002) 101 Cal.App.4th 693, 706.) Accordingly, the order is appealable.

B. Applicable Legal Principles and the Standard of Review

Section 874.040 governs the apportionment of costs in a partition action. It provides: "Except as otherwise provided in this article, the court shall apportion the costs of partition among the parties in proportion to their interests or make such other apportionment as may be equitable." (§ 874.040.) For purposes of this section, the term "costs of partition" includes "[r]easonable attorney's fees incurred or paid by a party for the common benefit," and "[o]ther disbursements or expenses determined by the court to have been incurred or paid for the common benefit." (§ 874.010, subds. (a), (e).) Apportionable costs may also include "reasonable expenses, including attorney's fees, necessarily incurred by a party for the common benefit in prosecuting or defending other actions or other proceedings for the protection, confirmation, or perfection of title . . . , with interest thereon at the legal rate from the time of making the expenditures." (§ 874.020.)

"The standard of review on issues of attorney's fees and costs is abuse of discretion. The trial court's decision will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence." (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545, fns. omitted (*Finney*).)

C. The Trial Court Had Jurisdiction to Order Apportionment

In his briefing, Michael repeatedly asserts that the trial court lacked jurisdiction to hear any further motions for apportionment of attorney fees

and costs following our affirmance of the prior apportionment orders in *DeMartini III*, *supra*, A147782. He contends that "[o]nce those [prior] orders became final, they were closed, and res judicata attached—any request for further apportionment required a fresh adjudication of the facts and claims." He also claims that the court "had no jurisdiction to enlarge or extend" the prior award. Citing to section 874.110,[6] he maintains that "attorneys' fees were already apportioned, and the statute does not contemplate a second fee award between interlocutory judgment of partition and sale where post-judgment fees were appealed and final." He also argues that California Rules of Court, rule 3.1702 (rule 3.1702) contemplates the filing of a single attorney fees and costs motion.[7] He acknowledges, however, that the court has always "retained general jurisdiction over the case."

The Timothy Group counters that the trial court *did* have jurisdiction to decide the apportionment motion. They note that sections 874.010 and 874.040 are statutes that specifically provide for attorney fee awards, thus nullifying the applicability of rule 3.1702. They also note that section 874.040 does not contain any restrictions on how many times a trial court may apportion expenses and attorney fees associated with a partition action. Further, they correctly observe that after a trial court enters an interlocutory

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[6] Section 874.110 provides: "(a) The costs of partition as apportioned by the court may be ordered paid in whole or in part prior to judgment. [¶] (b) Any costs that remain unpaid shall be included and specified in the judgment."

[7] Rule 31702(a) provides: "*Except as otherwise provided by statute*, this rule applies in civil cases to claims for statutory attorney's fees and claims for attorney's fees provided for in a contract. Subdivisions (b) and (c) apply when the court determines entitlement to the fees, the amount of the fees, or both, whether the court makes that determination because the statute or contract refers to 'reasonable' fees, because it requires a determination of the prevailing party, or for other reasons." (Italics added.)

judgment of partition, the case is far from over. In cases like this one where a court determines that a property should be sold, the court must appoint a referee "to divide or sell the property as ordered by the court." (§ 873.010, subd. (a).) The appointment of a referee contemplates that further issues may arise that require court intervention. Indeed, under section 873.070, "[t]he referee or any party may, on noticed motion, petition the court for instructions concerning the referee's duties under this title."

More generally, a trial court has broad authority to issue all necessary orders while a partition case is pending: "In the conduct of the action, the court may hear and determine all motions, reports, and accounts and may make any decrees and orders necessary or incidental to carrying out the purposes of this title and to effectuating its decrees and orders." (§ 872.120.) With respect to apportioned costs, the court also may order the parties to pay these costs "in whole or in part prior to judgment." (§ 874.110, subd. (a).) It is only when all steps have been completed to effectuate the interlocutory judgment that the trial court enters a "final" judgment in the partition action. (§ 874.210.) The court "loses" jurisdiction over the case once this final judgment is entered, not before. Thus, the trial court here was not required to rely on its prior orders as authority to rule on the instant apportionment motion. Accordingly, to the extent Michael asserts that the court lacked jurisdiction we find the assertion lacks merit.

Relatedly, Michael argues that Timothy failed to establish his entitlement to two successive postjudgment attorney fee awards. He asserts that section 874.110 does not contemplate a second fee award between interlocutory judgment of partition and sale. The argument is not well taken. Again, section 874.110 provides: "(a) The costs of partition as apportioned by the court may be ordered paid in whole or in part prior to judgment. [¶]

(b) Any costs that remain unpaid shall be included and specified in the judgment." Nothing in this statute or section 874.040 suggests that a party seeking to apportion such costs is limited to a single motion.

In his reply brief, Michael states that he is *not* arguing that Timothy was precluded from seeking further apportionment. Rather, he is arguing that Timothy was not entitled to obtain further relief founded on retrospective determinations made in the trial court's prior order. For example, he claims that while the parties had previously agreed to apportion environmental clean-up costs according to ownership interests, there was no agreement to similarly apportion future such costs. He further asserts that the new order includes categories of fees and costs that are broader in scope than any "hard out-of-pocket clean-up costs contemplated in the initial orders."

Michael's contentions need not delay us any further. On appeal, "[w]e do not review the trial court's reasoning, but rather its ruling." (*J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15.) Thus, we may affirm the trial court's ruling "on any basis presented by the record whether or not relied upon by the trial court." (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1.) As we have explained above, irrespective of its prior orders, the trial court was statutorily authorized to apportion the attorney fees and costs that Timothy incurred in remediating the Property following the entry of the prior award.

D. The Claimed Fees and Costs Were Reasonably Incurred for the Common Benefit

Michael contends that the trial court failed to determine whether the claimed fees and costs were reasonably and necessarily incurred for the common benefit. He insists that the court merely "rubber-stamped a near $800,000 award with no analysis whatsoever." He also asserts that the court

did not review the propriety of the claimed costs, instead relying solely on the prior orders in granting Timothy's request. He argues that "it was incumbent upon the court to adjudicate these demands anew," and asserts that the court's alleged failure to do so was an abuse of discretion.

As noted above, section 874.010 provides that the recoverable costs of partition include, "[r]easonable attorney's fees incurred or paid by a party for the common benefit" and "[o]ther disbursements or expenses determined by the court to have been incurred or paid for the common benefit." (§ 874.010, subds. (a) & (e).) "[T]he 'common benefit' in a partition action is the proper distribution of the ' "respective shares and interests in said property by the ultimate judgment of the court." ' " (*Orien v. Lutz* (2017) 16 Cal.App.5th 957, 967.) Whether attorney fees and costs have been incurred for the common benefit "must be decided upon the facts and circumstances in each particular case." (*Stewart v. Abernathy* (1944) 62 Cal.App.2d 429, 433 [applying former apportionment statute, § 796]; accord, *Finney*, *supra*, 111 Cal.App.4th at pp. 548–549.)

Michael appears to concede that it would be appropriate to apportion Timothy's out-of-pocket expenses incurred for the environmental clean-up as required by the DTSC, but he faults Timothy's inclusion of "several hundred thousand dollars" in allegedly "unauthorized, unnecessary, and duplicative attorneys' fees" incurred in managing the clean-up process. (Bold and italics omitted.) He maintains that the court could not have considered the common benefit or reasonableness factors because no evidence was offered to establish the reasonable necessity or value of the claimed fees and costs.

For example, Michael claims Timothy did not establish that fees incurred in managing and supervising the site remediation were authorized, given that the receiver had the exclusive authority to manage and remediate

the site under the DTSC's jurisdiction. He asserts that Timothy's actions were not for the common benefit because he allegedly "proceeded 'unilaterally' in defiance of the [receiver's] exclusive power without consent of all owners." He also contends that Quik Stop "is the responsible party" and argues that remediation costs and fees should be borne by it or by Timothy, and not by Michael. He further complains that there was no evidence that deliverable results have been obtained, and asserts that Timothy and his environmental counsel were not qualified to manage the toxic clean-up. Michael's arguments are not convincing.

The first apportionment order issued by the trial court included apportionment of the remediation costs paid by Timothy. At the time, the court had already appointed a referee and a receiver, the DTSC had already exercised its jurisdiction, and the Quik Stop matter had been resolved. Even Michael conceded in his opposition to the first apportionment order that the Timothy Group's request for attorney fees and costs relating to posttrial management and environmental work at the Property "should be apportioned among the parties according to interest." He indicated that he had "no objection to this apportionment, as these costs—at least in theory—are incurred for the common benefit of all the parties." In the present appeal, he does not explain what has changed since the first order was issued that would cause the current fees and costs not to have been incurred for the common benefit, or to be otherwise unauthorized. Indeed, insofar as the environmental remediation appears to be a prerequisite for the sale of the Property, it is difficult to imagine how money spent towards achieving such

remediation could be understood as being for anything other than the common benefit.[8]

We conclude the court did not err in determining that the expenses Timothy has continued to advance towards the Property's environmental remediation were properly incurred for the common benefit of the parties.

E. The Award Is Supported by Substantial Evidence

Michael asserts that the evidence is insufficient as a matter of law to support the award because the evidence that Timothy submitted to the trial court was unverified, unauthenticated, incomplete, and inadmissible.

"[T]he power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874, italics omitted.) " 'Substantial evidence' " is evidence of "ponderable legal significance," that is "reasonable

[8] In the present apportionment order, the trial court indicated that its ruling was based, in part, on its own "knowledge and experience of this case." We observe that the trial judge has been assigned to this case since February 2011. The judge issued both the interlocutory judgment and the prior apportionment award. She also appointed both the referee and the receiver, and is well acquainted with the DTSC action and the Property's remediation needs. We further note that nothing in the record suggests that either the referee or the receiver has had any issue with Timothy's participation in the remediation process.

in nature, credible, and of solid value." (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644.)

Michael raises a slew of contentions regarding the state of the evidence. He first complains that Timothy failed to provide declarations or contracts establishing the need for four attorneys, nor did he provide any declarations of counsel verifying that the time they billed was reasonable, necessary, recoverable, and beneficial. He also notes that the attorney billing documents contain block-billed entries that were "heavily redacted and vague" or reflect time incurred by multiple attorneys without explanation. He reports that some of the billing entries appear to include time for noncompensable matters, and include journal entries from one attorney that are not even billing statements. He also faults the lack of explanation as to the beneficial work product regarding the Quik Stop settlement and cost-sharing agreement. He further faults Timothy for failing to submit verified invoices substantiating payment of the $540,000 in clean-up costs, and for failing to establish that the work was authorized and required by the DTSC, or that the work was successful. He argues that Timothy's transaction list is not admissible evidence that $540,000 in costs were reasonably incurred. He also criticizes Timothy for failing to submit evidence documenting any cost-sharing or indemnity by Quik Stop.

None of the specific evidentiary objections that he raises in his appellate briefs were made in his opposition papers below. Below, Michael objected to Timothy's evidence by merely asserting that "the fees claimed are unreasonable, excessive, and inflated and include hours that should not have been spent at all (and lack information to form additional opinion thereon)." His failure to raise any specific evidentiary objections bars consideration of these objections on appeal. "Appellate courts are loath to reverse a judgment

on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack. [Citation.] Bait and switch on appeal not only subjects the parties to avoidable expense, but also wreaks havoc on a judicial system too burdened to retry cases on theories that could have been raised earlier." (*JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 178.)

In his reply brief, Michael appears to skirt his omission, stating that it was "entirely reasonable" for him to have expected the trial court to subject the evidence Timothy submitted in his moving papers to "the rigorous scrutiny the trial court brought to bear in the prior proceedings." He also asserts his invocation of "the general objections (unsubstantiated, unnecessary, unauthorized, no back-up, etc.) . . . were enough without going line-by-line." We are not persuaded. While he suggests the court was remiss for not ordering supplemental briefing to allow the parties to detail any objections "in a manageable format," as it did before issuing its prior apportionment order, he does not explain what prevented him from detailing such objections without the court's prompting. We also reject any suggestion that the trial court was required to order supplemental briefing merely because it did so on a prior occasion.

Michael asserts it was Timothy's burden to have provided further documentation to substantiate his right to recover remediation costs. However, because the trial court's order on appeal is presumed correct, Michael, as the appellant, has the burden to demonstrate reversible error. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Further, in his declaration signed under penalty of

perjury, Timothy *did* include a transaction list documenting all of his expenses. Michael's argument that Timothy should have provided further back-up documentation goes to the weight of the evidence, not the lack of substantial evidence to support the award.

Michael also argues that the attorney billing statements that Timothy submitted should have been authenticated by counsel, asserting that these documents constituted "inadmissible hearsay." We need not determine whether the billing statements constituted inadmissible hearsay in whole or in part because "for the purpose of fixing attorney's fees," the trial court "is not bound by technical rules of evidence, since it is not trying an issue in the case and is merely seeking information upon which to base its order." (*Frank v. Frank* (1963) 213 Cal.App.2d 135, 138; *Rose v. Rose* (1895) 109 Cal. 544, 546 [same]; see *Padilla v. McClellan* (2001) 93 Cal.App.4th 1100, 1106–1107 ["courts determine the reasonableness of attorney fees every day by ruling on motions," based on "declarations only, not live testimony" in "hearings [that] are usually short" and "[t]rial courts are afforded wide discretion to determine the amount of attorney fees within that framework"].)

Michael also appears to contend that the trial court erred because it did not perform a lodestar analysis to fix the amount of reasonable attorney fees before apportioning them. In addition to allocating attorney fees among the parties, "the trial court has broad authority to determine the amount of a reasonable fee." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*).) "This determination is necessarily ad hoc and must be resolved on the particular circumstances of each case." (*Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 452 (*Meister*).) As our Supreme Court has repeatedly observed, " '[t]he "experienced trial judge is the best judge of the value of professional services rendered in his [or her]

court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong" [']—meaning that it abused its discretion." (*PLCM Group*, at p. 1095.) The trial court in this case determined that the amount of attorney fees requested by Timothy was reasonable. We have no basis on which to disturb that determination.

The attorney fee award here was based on the hours the attorneys expended on the case multiplied by their hourly rates, which were detailed in the billing entries attached to Timothy's declaration. In other words, this was a straightforward lodestar calculation. (See *PLCM Group*, *supra*, 22 Cal.4th at p. 1095.) In cases such as this, the lodestar is the correct method for calculating statutory fees. (*Meister*, *supra*, 67 Cal.App.4th at pp. 448–449.) "To withstand scrutiny on appeal when this method is used, the record need only show the court awarded fees using that approach." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810.) The trial court "*may*" adjust the lodestar figure "based on consideration of factors specific to the case." (*PLCM Group*, at p. 1095, italics added.) But it is not required to do so.

Finally, Michael asserts that attorney fees incurred in connection with the Quik Stop matter and DTSC regulatory proceedings are not recoverable. He further contends that the court erred in awarding interest because Timothy's claim fails to qualify under either section 874.020 or 874.030.[9] Neither of these contentions was raised in his opposition below and therefore these contentions, like his evidentiary objections, are also forfeited on appeal.

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[9] Section 874.030 provides: "Where disbursements have been made by a party under the direction of the court, interest at the legal rate shall be allowed thereon from the time of making such disbursements."

In sum, we conclude that the trial court did not abuse its discretion in granting the Timothy Group's motion for equitable apportionment of attorney fees and costs.

III. DISPOSITION

The order is affirmed. The Timothy Group is to recover its costs on appeal.

EAST, J.*

WE CONCUR:

MARGULIES, ACTING P. J.

BANKE, J.

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* Judge of the San Francisco Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.